HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION No.12341 of 2006

Between:

Siyyadri Chinna Rao

... Petitioner

And

The Government of Andhra Pradesh,
Rep. By its Secretary, Law (LA&J Courts.A2)
Department, Hyderabad & another

... Respondents

:: O R D E R ::

Counsel for the petitioner : Shri S. Satyam Reddy

Counsel for the respondents : Shri A. Satya Prasad
Learned Special Government
Pleader

19.02.2007

Per G.S. Singhvi, CJ

The petitioner, who is practising as an advocate at Machilipatnam, has filed this petition for issue of a mandamus to the respondents to fill up the post of Special Public Prosecutor for the Special Court constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the 1989 Act') at Machilipatnam from the panel of names prepared by the District Magistrate.

In the affidavit filed by him, the petitioner has pleaded that even though the post of Public Prosecutor for the Special Court constituted under the 1989 Act is not encadred in the Andhra Pradesh State Prosecution Service Rules, 1992 (for short, 'the 1992 Rules'), the respondents are seeking to appoint a member of the prosecution cadre as Special Public Prosecutor without

considering the names of eligible advocates. The petitioner has further averred that his name appears at Serial No.1 in the panel sent by the District Magistrate, but the respondents are bent upon to appoint a member of the prosecution cadre for which the posts were sanctioned vide G.O.Ms.No.102, dated 8-8-2003.

The stand taken by the respondents as reflected from affidavit dated 16-1-2007 filed by Shri T. Madan Mohan Reddy, Secretary to Government, Law Department is that vide G.O.Ms.No.46, Social Welfare (PCR) Department, dated 16-6-2005, Special Courts were constituted for the districts of Nizamabad, Kadapa, Karimnagar and Krishna for trial of cases under the 1989 Act. Simultaneously, the posts of Special Public Prosecutors were sanctioned and the same are to be filled in accordance with the provisions of the 1992 Rules, which have been framed by the Governor of Andhra Pradesh under proviso to Article 309 of the Constitution of India read with Sections 24 and 25 of the Code of Criminal Procedure. According to the respondents, the post of Special Public Prosecutor attached to the Special Court constituted under Section 14 of the 1989 Act is a cadre post in the rank of Additional Public Prosecutor, which is required to be filled in accordance with the 1992 Rules. Sri T. Madan Mohan Reddy has further averred that District Magistrate, Krishna had prepared a panel of the advocates without any requisition from the competent authority.

We have heard learned counsel for the parties. In our opinion, the writ petition is liable to be dismissed by being treated as a piece of frivolous litigation. Sections 24 and 25 of Code of Criminal Procedure, which regulate appointment of Public Prosecutors and Additional Public Prosecutors in the High Court and Districts or local area and Assistant Public Prosecutors in the Courts of Magistrates, and the relevant provisions of the 1992 Rules, read as under:

> "**24. Public Prosecutors:**
> (1)For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government, as the case may

be.

(2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district, or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub- section (3) or sub-section (6), only if he has been in practice as an Advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purpose of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such

person has been in practice as an advocate.

25. Assistant Public Prosecutors:

1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the courts of Magistrates.

1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the courts of Magistrates.

2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in-charge of that case:

Provided that a police officer shall not be so appointed –

a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

b) if he is below the rank of Inspector."

Andhra Pradesh State Prosecution Service Rules, 1992

Rules 2, 3 and 5 of the 1992 Rules, which provide for constitution of the service, method of appointment and qualifications, and have bearing on the decision of the writ petition, read as under:

"**2. Constitution:-**

The Service shall consist of the following categories of posts in the Andhra Pradesh State Prosecution Service.

Category-1:	Director of Prosecutions
Category-2:	Additional Director of Prosecutions
Category-3:	Public Prosecutor/Joint Director of Prosecutions
Category-4:	Additional Public Prosecutors Grade-I/ Deputy Director of Prosecutions
Category-5:	Additional Public Prosecutors, Grade-II
Category-6:	Senior Assistant Public Prosecutor
Category-7:	Assistant Public Prosecutor

3. Method of Appointment:-

Subject to the other provisions in these rules, the method of appointment

for the several categories shall be as follows:-

S.No.	Category (1)	Method of appointment (2)
1.	Director of Prosecutions	a) By promotion from the category of Additional Director of Prosecutions Category with a service of not less than 2 years. b) If no suitable candidate is available for promotion in the category of Additional Director by transfer or on deputation from the State Higher Judicial Service. OR c) By transfer or on deputation from the IPS cadre of the Andhra Pradesh an officer over and above the rank of Deputy Inspector General of Police possessing a Law Degree.
2.	Additional Director of Prosecutions	By promotion from the category of Public Prosecutor/Joint Director of Prosecutions, Category-3 with a service of not less than 2 years or by transfer or on deputation from Andhra Pradesh State Higher Judicial Service.
3.	Public Prosecutor/Joint Director of Prosecutions	By promotion from the category of Additional Public Prosecutor –Grade-I/Deputy Director of Prosecutions Category-4 with a service of not less than 2 years or by transfer or on deputation from the State Judicial Service of the cadre of Sub-Judges.
4.	Additional Public Prosecutor, Grade-I/Deputy Director of Prosecutions	By promotion from the category of Additional Public Prosecutor, Gr.II, Category-5 with a service of not less than 3 years or by transfer or on deputation from State Judicial Service of the Cadre of Munsif Magistrate.
5.	Additional Public Prosecutor, Grade-II	(i) 70% by promotion from the Category-6 Senior Assistant Public Prosecutor with a service of not less than 2 years. (ii) 30% by direct recruitment

6.	Senior Assistant Public Prosecutor	By promotion from the Category – Assistant Public Prosecutor with a service of not less than 2 years.
7.	Assistant Public Prosecutor	By direct recruitment.

Note:

a) 30% of the substantive vacancies in the category of Additional Public Prosecutor, Gr.II (Category-5) shall be filled by direct recruitment.

b) The remaining vacancies in the category of Additional Public Prosecutor, Grade-II shall be filled by promotion from the Category-6. If a suitable or qualified person in the category of Senior Assistant Public Prosecutor is not available, the said vacancies shall also be filled by direct recruitment or by contract.

c) The State Level Recruitment Board in Police Department shall from time to time hold the examination/selection for the candidates for appointment by direct recruitment."

5. QUALIFICATIONS:

No person shall be eligible for appointment to the categories specified in column (1) of the Table below by the method specified in column (2) unless he possesses the qualifications specified in the corresponding entry in column (3) thereof:-

Category	Method of Appointment	Qualifications
5.Additional Public Prosecutors	By direct recruitment or by promotion	i) Must possess a Bachelor's Degree in any subject with a Bachelor's Degree in Law of a University in India established or incorporated by or under a Central Act a Provincial Act or a State Act or an Institution recognized by the University Grants Commission or an equivalent qualification. ii) Must have practiced as an Advocate for not less than seven years for direct recruitment.

7. Assistant Public Prosecutor	By direct recruitment	i) Must possess a Bachelor's Degree in any subject with a Bachelor's Degree in Law of a University in India established or incorporated by or under a Central Act a Provincial Act or a State Act or an Institution recognized by the University Grants Commission or an equivalent qualification. ii) Must have practiced as an Advocate and must have not less than 3 years active practice in Criminal Courts in the State.

AMENDMENT

Provided that the candidates having passed the five year course in Law after Intermediate shall also be eligible for recruitment to the posts of APPs (Added as per G.O.Ms.No.448, Home (Courts-C) Dept., dt.16-9-92."

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Analysis of the statutory provisions:

Section 24 (4) envisages that the District Magistrate shall, in consultation with the District and Sessions Judge, prepare a panel of the names of persons who are considered fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district. Sub-section (5), which is couched in negative form, declares that no person shall be appointed by the State Government as Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel prepared under sub-section (4). However, the prohibition contained in sub-section (5) is subject to the non-obstante clause contained in sub-section (6), which lays down that if there exist a cadre of prosecuting officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such cadre. Proviso to this section enables the State Government to revert to the panel prepared under sub-section (4), if suitable person is not available in the cadre of prosecuting officers.

The 1992 Rules provide for direct recruitment to the cadres of Assistant Public Prosecutors (100%) and Additional Public Prosecutors Grade-II (up to the extent of 30%) through the agency of the Andhra Pradesh State Level Recruitment Board (hereinafter referred to as 'the Board'). The minimum

qualifications prescribed for the post of Assistant Public Prosecutors are Bachelor's Degree in any subject with a Bachelor's Degree in Law of a University in India established or incorporated by or under a Central Act, a Provincial Act or a State Act or an Institution recognized by the University Grants Commission or an equivalent qualification and at least three years' practice as an Advocate in Criminal Courts in the State. For the post of Additional Public Prosecutor Grade-II, the minimum academic qualification is identical to the one prescribed for the post of Assistant Public Prosecutor, but the candidate is required to possess experience of at least seven years as an Advocate. This shows that at the entry level, in the cadre of Prosecutors, the Advocates having requisite experience are eligible to be considered. The requirement of seven years experience as an Advocate for appointment as Additional Public Prosecutor Grade-II by direct recruitment is in consonance with Section 25 (7) CrPC. The Additional Public Prosecutors Grade-II up to the extent of 70%, Additional Public Prosecutor Grade-I/Deputy Director of Prosecutions, Public Prosecutor/Joint Director of Prosecutions, Additional Director of Prosecutions and Director of Prosecutions are required to be filled by promotion. The reason why the rule making authority has not provided for direct recruitment to these posts is not far to seek. By providing recruitment to these posts only by promotion, the rule making authority wanted to ensure that only persons with sufficient experience of having worked as Prosecutors in the lower Courts are assigned the task of dealing with more serious cases in the higher Courts. This is also intended to ensure that the members of the lower cadre have adequate avenues of promotion, which will continue to inspire them to give their best to the society.

In the light of the above, we shall now consider whether the petitioner is entitled to be appointed as Special Public Prosecutor as of right. No doubt, in terms of sub-section (4) of Section 24 CrPC, the District Magistrate can, in consultation with the Sessions Judge, prepare a panel of persons who are considered fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the District, but such panel can be acted upon only if no suitable person is available in the cadre for appointment as Public Prosecutor

or Additional Public Prosecutor.

The petitioner appears to have succeeded in persuading District Collector, Machilipatnam to suo motu prepare and forward a panel of the advocates (including the petitioner) for appointment as Special Public Prosecutor, but that does not entitle him to claim appointment on the vacant post of Special Public Prosecutor as of right. The interim order passed by the learned Single Judge restraining the respondents from filling up the post of Special Public Prosecutor for the Special Court at Machilipatnam has only helped the Public Prosecutor attached to the Court, which was designated as a Special Court vide G.O.Ms.No.46, dated 6-6-2006 to continue with that Court. This resulted in violation of the mandate of Section 15 of the 1989 Act, which reads as under:

> **"15. Special Public Prosecutor:**
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> For every Special Court, the State Government shall, by notification in the official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court."

In our opinion, the petitioner's grievance in the matter of appointment of Special Public Prosecutor is not only premature, but totally unwarranted. The averments contained in the pleadings of the parties do not show that the competent authority has taken steps for recruiting Special Public Prosecutor for the Special Court constituted under the 1989 Act at Machilipatnam. Till that happens, the petitioner can have no legitimate cause of grievance and the writ petition filed by him for issue of a mandamus to the respondents to fill up the post of Special Public Prosecutor from the panel sent by the District Magistrate cannot but be treated as premature and is liable to be dismissed as such.

In **G. Sarana v. Lucknow University**[1], the Supreme Court while declining to interfere with the order passed by Allahabad High Court in the matter of appointment of respondent No.8 as Professor of Anthropology in the Faculty of Arts of Lucknow University, observed:

> "It is difficult to understand how the writ petition or for that matter

> the present appeal before us is maintainable when the recommendation of the Selection Committee has still to be scrutinized by the Executive Council of the University and either accepted or rejected by it and other remedies by way of representation to the Executive Council and an application for reference of the matter under Section 68 of the Uttar Pradesh Universities (Re-enactment and Amendment) Act, 1974, to the Chancellor are still open to the appellant and have not been exhausted."

In **Kunda S. Kadam v. K.K. Soman**[2], the Supreme Court reversed the order of the Division Bench of the Bombay High Court which had quashed the recommendations made by the Selection Committee and observed:

> "We consider that the time has not arrived for the court to adjudicate upon the merits and that the Writ Petition itself was premature. The normal procedure should have been for the recommendation of the Public Service Commission to be considered by the Corporation. It was open to the Municipal Corporation to accept the recommendation or not to accept the recommendation. The learned Attorney General, appearing for the Corporation, says that it was open to the Corporation to ask for other names and make its own choice. We are not called upon to state what the powers of the Corporation in such a situation are. It was also open to the State Government even if the Corporation had made an appointment to confirm or not to confirm it, depending on its own view of the matter. We mention all this only to emphasise that it was too early for a writ petition to be entertained and decided on the merits."

The philosophy underlying the Supreme Court's refrain against Court's interference with the process of selection is that such orders have the tendency of not only adversely affecting the careers and constitutional right to equality guaranteed to the eligible persons to be considered for selection, but also has the tendency to stultify the functioning of the government departments, public organisations and institutions. It is well known that as and when a petition filed by person aggrieved by selection or appointment/promotion to a public post or service is finally allowed, the Court can nullify the selection and also issue direction for reconsideration of the candidature of eligible persons. If it is a case of promotion, the Court can quash the recommendations made by the Departmental Selection Committee

with a direction for reconsideration of the cases of eligible persons. In an extreme case, the Court can also direct that a selected candidate should be appointed by direct recruitment or appointment and be given consequential benefits. However, restraint orders which have the effect of stalling the process of selection whether by direct recruitment or by promotion are to be avoided except when the Court is fully convinced that non-grant of interim relief would cause irreparable injury to the petitioner and the larger public interest.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.15344 of 2006 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

February 19, 2007

G.V. SEETHAPATHY, J

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[1] AIR 1976 SC 2428

[2] AIR 1980 SC 881